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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE WELLS FARGO & COMPANY SHAREHOLDER DERIVATIVE LITIGATION	Lead Case No. 3:16-cv-05541-JST
This Document Relates to: ALL ACTIONS.	**CO-LEAD PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF SETTLEMENT** Date: August 1, 2019 Time: 2:00 P.M. The Honorable Jon S. Tigar Courtroom 9, 19th Floor

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NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF SETTLEMENT

PLEASE TAKE NOTICE that, pursuant to Rule 23.1 of the Federal Rules of Civil Procedure and the Court's Order Granting Preliminary Approval of Derivative Action Settlement (the "PA Order," Dkt. 274), on August 1, 2019, at 2:00 p.m., Court-appointed co-lead plaintiffs the Fire and Police Pension Association of Colorado ("FPPA") and the City of Birmingham Retirement and Relief System ("Birmingham") (together, "Co-Lead Plaintiffs" or "Plaintiffs"), will move the Court, before the Honorable Jon S. Tigar, for entry of a Judgment granting final approval of the proposed settlement of this Action. The grounds for this motion are that the proposed Settlement is fair, reasonable and adequate. This motion is supported by the (1) accompanying Memorandum of Points and Authorities; (2) the accompanying Supplemental Joint Declaration of Richard M. Heimann and Joseph E. White, III ("Supp. Joint Decl."); (3) Declaration of Sean A. Petterson ("Petterson Decl."); (4) Declarations of Richard M. Heimann of Lieff Cabraser ("Lieff Cabraser Decl."), Joseph E. White, III of Saxena White ("Saxena White Decl."), Daniella Quitt of Glancy Prongay & Murray LLP ("Glancy Decl."), Shane P. Sanders of Robbins Arroyo LLP ("Robbins Arroyo Decl."), and Bruce E. Jameson of Prickett, Jones & Elliott, P.A. ("Prickett Jones Decl."), and accompanying exhibits; (5) Declaration of Daniel B. Rehns of Hach Rose Schirripa & Cheverie LLP ("Hach Rose Decl."), and exhibits; (6) Declarations of Professor Brian T. Fitzpatrick ("Fitzpatrick Decl.") and Professor Jeffrey N. Gordon ("Gordon Decl."); (7) Declarations of Kevin B. Lindahl of FPPA ("FPPA Decl.") and James D. Love of Birmingham ("Birmingham Decl."); (8) previously submitted Declarations of Hon. Daniel Weinstein (Ret.) (Dkt. 270-3) ("Weinstein Decl.") and Professor Michael A. Santoro (Dkt. 270-4) ("Santoro Decl."); and (9) all other prior pleadings and papers in this Action; arguments of counsel; and such additional information or argument as may be required or considered by the Court. Pursuant to Local Rule 7-2(c), a proposed order granting this motion will be submitted with Co-Lead Counsel's reply on July 25, 2019, after the deadline for objections.

A proposed Judgment and Order of Dismissal approving the Settlement will be submitted with Co-Lead Plaintiffs' reply submission on July 25, 2019, after the July 11, 2019 deadline for objections to the Settlement has passed.

STATEMENT OF ISSUE TO BE DECIDED

1. Whether the Court should grant final approval of the proposed Settlement as fair, reasonable and adequate.

MEMORANDUM OF POINTS AND AUTHORITIES[1]

I. INTRODUCTION

The Settlement of this Action is the culmination of more than two years of hard-fought litigation on one of "the most difficult legal theories in corporate law." The Settlement is comprised of two categories of benefits to the Company: *first*, a $240 million cash payment from Defendants' insurers—representing the largest insurance-funded monetary component of any shareholder derivative settlement by over $100 million; and *second*, corporate governance reforms and compensation forfeitures and reductions that conferred a substantial benefit to Wells Fargo. On May 14, 2019, the Court granted preliminary approval of the Settlement, preliminarily determining that the Settlement was fair, adequate and reasonable, and approving the Parties' proposed Notice Plan. Dkt. 274 (the "PA Order"). After complying with the Court-approved Notice Plan, Co-Lead Plaintiffs now respectfully request that the Court grant final approval of the Settlement as fair, adequate and reasonable. Final approval of the Settlement is appropriate in light of the following factors:

First, the $240 million insurance cash payment to the Company is unprecedented for several reasons. It is the second largest monetary recovery ever obtained in a derivative action settlement and the largest insurer-funded cash settlement in history, exceeding the second-place settlement by more than $100 million. It is also the largest settlement of an action predicated on establishing the especially difficult *Caremark* standard. The $240 million cash payment by the

[1] Unless otherwise noted, capitalized terms generally retain their meanings from the Settlement, except that for purposes of this motion, "Plaintiffs' Counsel" refers to Co-Lead Counsel, Glancy, Robbins Arroyo, and Prickett Jones, and "Defendants" refers collectively to the individuals referenced in the Stipulation as the Officer Defendants and the Director Defendants; all emphasis is added; and all internal citations and quotation marks have been omitted.

Company's insurers represents a recovery of between 6.9 and 21.8 percent of estimated maximum recoverable damages—well in excess of settlement recoveries obtained even in similarly sized securities class actions. Indeed, the Court has already explained that "the insurer-funded payment alone puts the Settlement within the range of possible approval." PA Order at 10.

Second, Wells Fargo has acknowledged that the facts alleged in the Action were significant factors taken into account by the Company and its Board of Directors in implementing compensation forfeitures and reductions and a series of corporate governance reforms. Specifically, the Board reduced compensation for several senior officers and required others (including Defendants Stumpf and Tolstedt) to forfeit past compensation, for a total of $122.5 million (the "Clawbacks"). In addition, Wells Fargo also adopted corporate governance reforms, including: (i) new oversight responsibilities and amended charters for Committees charged with risk management and legal compliance; (ii) the appointment of a new group of independent directors and an overhaul of top management; (iii) reforms to bolster Board independence and create critical distance from management; and (iv) the alignment of economic incentives with risk mitigation, good governance, and long-term sustainability (the "Reforms"). *See* Dkt. 270-1. These initiatives implemented by Wells Fargo follow and respond to specific proposals requested by Plaintiffs during the pendency of the litigation and the negotiations that culminated in the Settlement. Indeed, Plaintiffs' corporate governance expert has opined that the Reforms and Clawbacks are "extraordinarily important" whose value may "exceed[] even a substantial out-of-pocket recovery." Gordon Decl. ¶ 20. The Parties and the Mediator have agreed that the Reforms and Clawbacks conferred a substantial benefit to Wells Fargo conservatively valued at $80 million, for a <u>total Settlement value of $320 million</u>.

Third, this Action entailed significant risks with respect to liability, damages, and protecting this Court's favorable rulings against collateral attack. Derivative lawsuits are rarely successful. To satisfy the exacting standard for establishing the Director Defendants' liability under a "director oversight" theory, Plaintiffs would have to prove those Defendants (i) had actual or constructive knowledge of the misconduct, and (ii) failed to act in the face of a known duty to act, thereby demonstrating *conscious disregard* for their responsibilities—in effect, that the

Defendants utterly failed to monitor or act at all. Throughout this litigation, Defendants set forth numerous arguments against a finding of liability that jeopardized success at summary judgment and trial, including the fact that the Board took numerous actions and implemented various initiatives during the Relevant Period to address the Improper Sales Practices.

But even if Plaintiffs established liability at trial, proving damages would be equally if not more difficult. First, Defendants asserted that the $1.1 billion in "out-of-pocket" damages Wells Fargo suffered due to fines, penalties and costs were not proximately caused by the misconduct at issue in the Action, and that they instead related to settlements of alleged misconduct that took place before the alleged Relevant Period, were attributable to misconduct distinct from the Improper Sales Practices, or were part of Wells Fargo's ongoing course of business. Second, the $1.4 to $2.4 billion in lost income Plaintiffs asserted was suffered as a result of Defendants breaches is inherently speculative and difficult to prove. Finally, even if Plaintiffs could prove that lost business, they would be required to specifically tie such damages to Defendants' misconduct, as opposed to other potential causes including general market effects or the independent conduct of employees unrelated to Defendants' fiduciary duties. As the Court explained, Plaintiffs faced "particular difficulties" in establishing this "larger category of lost income damages." PA Order at 11.

Fourth, the Settlement resulted from years of diligent and complex work by Co-Lead Plaintiffs and Co-Lead Counsel. Plaintiffs conducted thorough investigation of the claims to substantiate them and ensure demand futility was adequately pled. Plaintiffs litigated not just in this forum but also in California State Court and Delaware Chancery Court to protect shareholders' interests from collateral attack. Later, Plaintiffs consulted with a string of experts in the areas specific to this lawsuit, including corporate governance, banking regulation, insurance coverage, and damages. And they engaged in extensive document discovery and prepared to take more than 40 fact witness depositions, had the case not settled.

Indeed, before settling in December 2018, Co-Lead Plaintiffs rejected several opportunities to settle the case at an earlier stage of the litigation, and instead pressed on with their litigation efforts. Those efforts culminated in an intensive mediation process in 2018

overseen by the Honorable Daniel Weinstein (Ret.), a former judge and highly respected mediator, and Jed Melnick, Esq., who brought valuable experience in securities and derivative actions. In all, the Parties participated in seven in-person, bi-coastal mediation sessions; prepared and exchanged at least five rounds of written submissions addressing legal and factual disputes; made numerous, detailed presentations on liability and damages; communicated extensively with the mediators; and negotiated directly with each other. This Settlement is, in short, the product of hard-fought, ably overseen negotiations between well-informed counsel.

The Settlement is fair, reasonable and adequate. It should be approved.

II. OVERVIEW OF THE ACTION

A. Co-Lead Plaintiffs Demonstrate Demand Futility And The Court Upholds The Majority Of Their Claims Against Defendants.

The Court appointed Co-Lead Plaintiffs and Co-Lead Counsel on January 12, 2017. Dkt. 70. On February 24, 2017, Co-Lead Plaintiffs filed their Consolidated Amended Verified Stockholder Derivative Complaint (the "Amended Complaint"). Dkt. 83. The Action alleges that, from January 2011, Defendants knew or consciously disregarded that the Company's employees were illicitly creating millions of customer accounts without those customers' knowledge or consent.

On March 17, 2017, Wells Fargo, joined by the Individual Defendants, moved to dismiss for failure to plead demand futility, federal securities claims, or a breach of fiduciary duty. Dkt. Nos. 99-102, 107, 108, 110. After briefing and oral argument, on May 4, 2017 the Court largely denied Wells Fargo's motion based on "[t]he extensive and detailed allegations in the complaint." Dkt. 129. In doing so, the Court highlighted particular "red flags" that "collectively . . . support[ed] an inference that a majority of the Director Defendants consciously disregarded their fiduciary duties despite knowledge regarding widespread illegal account-creation activities, and . . . that there is a substantial likelihood of director oversight liability." *Id.* at 24. On June 5, 2017, the Individual Defendants filed a series of motions to dismiss for failure to state a claim, which were heard by this Court on August 14, 2017 and substantially denied on October 4, 2017. Dkt. Nos. 139-141, 143-145, 174.

B. Co-Lead Plaintiffs Engaged In Extensive Discovery to Substantiate Their Claims.

The parties engaged in fact discovery for over a year. Co-Lead Plaintiffs sought discovery from Wells Fargo, each of the 20 individual defendants, as well as third parties. That discovery included extensive meet and confer over the adequacy of Defendants' discovery responses and the scope of Defendants' and Wells Fargo's productions. Co-Lead Plaintiffs also engaged in discovery with non-party regulatory agencies including the Federal Reserve, the Office of the Comptroller of the Currency, and the Consumer Financial Protection Bureau. Co-Lead Plaintiffs obtained and analyzed more than 3.5 million pages of documents and prepared for over 40 depositions of Defendants and relevant fact witnesses.

C. Co-Lead Plaintiffs Consolidated This Litigation In This Court To Prevent Inconsistent Outcomes.

Simultaneously, following the issuance of the Demand Futility Order and the 12(b)(6) Order, Co-Lead Plaintiffs undertook a comprehensive nationwide effort to coordinate related derivative actions in order to preserve their standing to pursue claims on behalf of the Company, avoid unnecessary and duplicative efforts, and prevent inconsistent outcomes in those proceedings. First, Co-Lead Plaintiffs successfully sought to stay or dismiss similar claims in concurrently pending actions in California and Delaware state courts. Doing so ensured that potentially adverse determinations in those cases would not have collateral estoppel effects in this Court, which represented a particularly heightened risk as the parallel California state action was twice dismissed on the pleadings. Second, Co-Lead Plaintiffs moved to relate or consolidate similar derivative actions in this Court, to ensure that all derivative claims related to the Improper Sales Practices would be adjudicated through a single action. *See* Dkt. Nos. 204, 228, 243. Co-Lead Plaintiffs thereby saved the Company from unnecessary and substantial litigation expenses.

D. Resolution Of The Action, Preliminary Approval, and Notice Plan.

The Parties engaged in an extensive settlement and mediation process, including three in-person sessions in August and September 2017, which did not result in a resolution. After continued litigation and discovery, the Parties engaged in four day-long mediation sessions under

the supervision of Judge Daniel Weinstein (Ret.) and Jed Melnick in the fall of 2018. Dkt. 270-3. On December 12, 2018, the Parties accepted Judge Weinstein's mediator's proposal, and thereafter negotiated the specific terms of the Settlement.

Based on Co-Lead Plaintiffs' direct oversight of the prosecution of this matter and with the advice of Co-Lead Counsel, Co-Lead Plaintiffs agreed to settle the claims in the Action pursuant to the terms and provisions of the Stipulation, discussed below, after considering (a) the very substantial financial benefit that Wells Fargo will receive under the proposed Settlement; (b) the significant Clawbacks and Reforms that Wells Fargo has implemented as part of the proposed Settlement; (c) the significant risks of continued litigation and trial; and (d) the desirability of consummating the Settlement as provided by the terms of the Stipulation.

On February 28, 2019, Co-Lead Plaintiffs moved for preliminary approval. Dkt. 270. On April 2, 2019, Plaintiffs filed a supplemental brief in further support of the preliminary approval of the Settlement. Dkt. 272. On May 14, 2019, the Court entered the Preliminary Approval Order. Thereafter, and pursuant to the Court-approved Notice Plan, the notice was published in several major newspapers and Wells Fargo filed a Form 8-K with the SEC on May 20, 2019. Notice was also published on Wells Fargo's website, via a national newswire service by Co-Lead Plaintiffs, and on an additional website created by Co-Lead Plaintiffs specifically for the purpose of providing notice to shareholders. Notice was also posted on the websites of Co-Lead Counsel—Lieff Cabraser and Saxena White.

Pursuant to the Preliminary Approval Order, the deadline for objections to the Settlement is July 11, 2019. Plaintiffs will file their reply brief on July 25, 2019. The Court has set a Fairness Hearing for August 1, 2019, at 2:00 P.M.

III. SETTLEMENT TERMS

The Settlement has two basic components:

First, Wells Fargo will receive a $240 million cash payment, representing 48 percent of the $500 million limit of the D&O insurance available to satisfy a judgment—the most realistic and significant source of recovery in the Action. Dkt. 272 at 2.

Second, Wells Fargo has implemented numerous important Reforms, for which Wells Fargo and Defendants agree and acknowledge that facts alleged in Co-Lead Plaintiffs' Complaint were "significant factors" in the determination to undertake those remedial actions. Several of these corporate governance changes were implemented in direct response to Co-Lead Plaintiffs proposing them to Wells Fargo in the August and September 2017 mediations. *See* Dkt. 270-1, Ex. A.; Gordon Decl. These Reforms include:

- The Company has updated Board reporting structures, including committee charters, in the wake of the Improper Sales Practices issues to include the type of reporting contemplated by Co-Lead Plaintiffs' proposals, including reporting in executive sessions;
- Since 2017, nine directors have departed, and seven new directors have joined the Board (in the Parties' prior mediation sessions in 2017, Co-Lead Plaintiffs requested the resignation of five directors, all of whom subsequently left the Board);
- The Company has ended product sales goals for retail banking team members in branches and call centers, and implemented new compensation and performance management programs in the Community Bank focused on the customer experience;
- The Company has and continues to formalize its training programs for directors, including training and onboarding for new directors, and has documented those processes and training plans in writing;
- The Company and the Board enhanced oversight of risk, including conduct risk and compliance risk, by, among other things, strengthening and enhancing the Company's Board approved risk management framework and emphasizing the role of risk management when setting corporate strategy and by further rationalizing and integrating certain risk management organizational, governance, and reporting practices; and
- The Company has implemented numerous new controls and enhanced many existing controls and customer feedback mechanisms (e.g., customer alerts and "mystery shopper" programs) to help ensure that account activity is authorized.

The Reforms included in the Settlement were specifically designed both to address and to prevent weaknesses in internal controls covered by the Action, including those relating to the Company's retail sales practices. Indeed, as Professor Michael A. Santoro, an expert on corporate governance, explains, "the Corporate Governance Reforms will help to detect, prevent, and mitigate the types of illegal and unethical activities that have been alleged to be at the heart of this litigation, including those that directly affect consumers in Wells Fargo's Community Banking business unit." Dkt. 270-4 at 2. He further opines that given the substantial value inherent in preventing misconduct that could result in billions of dollars of damages to Wells

Fargo and its shareholders, "the $20 million value the settling parties ascribe to the Corporate Governance Reforms is eminently reasonable." *Id.* at 14.

Similarly, Professor Gordon also determined that the prevention of similar misconduct from occurring in the future manifests the inherent value of the Reforms: "The test of the Reforms is whether they will substantially reduce the likelihood of a recurrence of serious compliance issues as exemplified by the Improper Sales Practices. . . . Reforms that reduced even a small recurrence risk by a meaningful amount would generate substantial value." Gordon Decl. ¶¶ 21, 23; *see also id*. ¶ 20 ("Thus in my opinion the $20 million attributed to Co-Lead Plaintiffs in the proposed Settlement is well within the range of value-creation-in-fact, perhaps even at the low end.").

The Clawbacks, totaling $122.5 million, were appropriate remedial steps to address the Improper Sales Practices. Dkt. 270-1 at 48. As Professor Gordon noted, "the Clawbacks transmit an important governance message: there will be significant financial penalties for failure to assure that the Company operates in a lawful way. . . . This effort to force employees to internalize the costs of compliance failures is an important governance step." Gordon Decl. ¶ 27. Wells Fargo acknowledged that facts alleged in the Action were a significant factor in the Board's determination to undertake the aforementioned personnel and compensation actions, and the Parties agreed that Plaintiffs' efforts related thereto conferred a value to Wells Fargo of $60 million. Dkt. 270-1 at 48.

The Settlement provides that Co-Lead Plaintiffs will release, on behalf of Wells Fargo, all claims related to the Improper Sales Practices, including all claims arising from the facts alleged in the Action or any of the related state court actions. Dkt. 270-1 at ¶¶ 25-27, 37-38. It also provides for the release of claims against the defendants named in the related state court actions, including certain other current or former directors, and American Express. *Id*.

Only after agreeing to these terms did the parties discuss Co-Lead Counsel's fee: Wells Fargo separately negotiated and agree to pay attorneys' fees totaling $68 million to Co-Lead Counsel (with no recovery of associated litigation expenses). *See* Dkt. 270-1 at 21. Wells Fargo agreed to these fees based on its own independent assessment of the monetary and non-monetary

value of the Settlement benefits to the Company. *See* Dkt. 270-1 at 66; Dkt. 270-3 at 6 ("stating that the requested fee award "was agreed to by Wells Fargo" and "is fair and reasonable in light of the substantial benefit conferred upon Wells Fargo and the effort expended by Co-Lead Counsel in achieving it").

Wells Fargo and its Board have approved the Settlement, including the monetary relief, Reforms, Clawbacks and attorneys' fees, and concluded that the Settlement of the Action under the terms set forth in the Stipulation was in the best interests of the Company and conferred a substantial benefit to Wells Fargo—an acknowledgment that underscores that the Settlement is fair, reasonable and adequate. *See* Fitzpatrick Decl. ¶ 28 ("Wells Fargo has conceded that these benefits were caused in 'significant' part by this litigation. This concession can only decrease Wells Fargo's take from this settlement by increasing class counsel's fee percentage. Thus, unlike the class action situation where a defendant might be indifferent over what the fee percentage is and feel free to make all sorts of statements to facilitate settlement, I put more credence in Wells Fargo's concession in a derivative action as it comes with a substantial financial price.").

IV. LEGAL STANDARD

Ninth Circuit jurisprudence reflects a strong public policy in favor of settlement. *See In re NVIDIA Corp. Derivative Litig.*, 2008 WL 5382544, at *2 (N.D. Cal. Dec. 22, 2008) (citing *MWS Wire Indus., Inc. v. Cal. Fine Wire Co.*, 797 F.2d 799, 802 (9th Cir. 1986)). This general principle is especially true in the context of shareholder derivative actions, which are "notoriously difficult and unpredictable" and where "settlements are favored." *Id.*

A derivative action "may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. R. Civ. P. 23.1(c). While it exercises its "sound discretion" in evaluating a settlement, "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Officers for Justice v. Civil Service Com'n of City and Cty. of San*

Francisco, 688 F.2d 615, 625 (9th Cir. 1982); *see also In re Pac. Enter. Sec. Litig*., 47 F.3d 373, 377-78 (9th Cir. 1995) (affirming ruling that shareholder derivative settlement was "'fair, reasonable and adequate to [the company]'").

In determining whether a settlement is fair, reasonable, and adequate, courts "may consider a range of factors, including the strength of the plaintiffs' case, the risk, expense, complexity, and likely duration of further litigation, the amount offered in settlement, the stage of the proceedings, the experience and views of counsel, and the reaction of class members to the proposed settlement."[2] *In re Hewlett-Packard Co. S'holder Derivative Litig*., 716 F. App'x 603, 605 (9th Cir. 2017). "The principal factor to be considered in determining the fairness of a settlement concluding a shareholders' derivative action is the extent of the benefit to be derived from the proposed settlement by the corporation, the real party in interest." *In re OSI Sys., Inc. Derivative Litig*., 2017 WL 5642304, at *2 (C.D. Cal. May 2, 2017); *In re Atmel Corp. Derivative Litig*., 2010 WL 9525643, at *12 (N.D. Cal. Mar. 31, 2010) (quoting *Shlensky v. Dorsey*, 574 F.2d 131, 147 (3d Cir. 1978)). The Ninth Circuit has cautioned that "the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits." *Officers for Justice*, 688 F.2d at 625.

Additionally, Rule 23(e)(2)[3] identifies factors that courts must consider in determining whether a class action settlement is "fair, reasonable, and adequate," including whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

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[2] As the Delaware Supreme Court summarized in *Polk v. Good*, 507 A.2d 531, 536 (Del. 1986), the "facts and circumstances" to be considered by courts in assessing the overall fairness of a proposed settlement include: (1) the probable validity of the claims; (2) the apparent difficulties in enforcing the claims through the courts; (3) the delay, expense and trouble of litigation; (4) the amount of the compromise as compared with the amount of any collectible judgment; and (5) the views of the parties involved. The applicable factors for settlement review under Delaware law—the *Polk* factors—are substantially similar to the Ninth Circuit's *Officers for Justice* factors, and regardless of which factors are applied by this Court, the Settlement clearly is fair, adequate, and reasonable and should be finally approved.

[3] In determining the standards applicable to approval of a derivative settlement, "[c]ases involving dismissal or compromise under Rule 23(e) of non-derivative class actions . . . [are] relevant by analogy." *Lloyd v. Gupta*, 2016 WL 3951652, at *4 (N.D. Cal. July 22, 2016).

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

"It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness, and the settlement must stand or fall in its entirety." *Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th Cir. 2003) (quoting *Hanlon*, 150 F.3d at 1026). As set forth below, each of these factors strongly weighs in favor of final approval of the Settlement.

V. THE PROPOSED SETTLEMENT MERITS FINAL APPROVAL

A. The Stage of the Proceedings and Co-Lead Plaintiffs' and Co-Lead Counsel's Vigorous Prosecution of this Action Supports Final Approval

The Settlement is the product of vigorous prosecution of the Action by Co-Lead Plaintiffs and Co-Lead Counsel and no conflicts have ever existed in this litigation. "Adequacy of representation . . . requires that two questions be addressed: (a) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (b) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *In re Mego Fin. Corp. Sec. Litig*., 213 F.3d 454, 462 (9th Cir. 2000). In the PA Order, the Court found no evidence of a conflict between either Co-Lead Plaintiffs or Co-Lead Counsel, and Wells Fargo and its "similarly situated" shareholders. Dkt. 274 at 7. That has not changed.

Moreover, the Court found that Co-Lead Plaintiffs "possessed 'sufficient information to make an informed decision about settlement'" by virtue of "two intensive rounds of motions to dismiss," "stays of numerous related derivative actions pending in other courts," and "extensive document discovery." *Id*. (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459). Indeed, the Settlement was reached only after over two years of fiercely-contested litigation, and after Co-Lead Plaintiffs conducted substantial fact discovery, including obtaining 727,679 documents from Defendants and seven non-parties comprising 3,529,385 pages, before reaching an agreement in

principle to settle the case. Dkt. 270 at 15. Co-Lead Plaintiffs also consulted with experts in corporate governance, regulatory matters, insurance coverage, and damages (Supp. Joint Decl. ¶ 94); and researched and prepared for depositions of over forty anticipated fact witnesses, including the twenty named Defendants (*id*. ¶ 128).

In sum, by the time the Settlement was reached, each side had sufficient information to assess the strengths and weaknesses of its claims. *Cicero v. DirecTV, Inc*., 2010 WL 2991486, at *3 (C.D. Cal. July 27, 2010) (holding that a settlement is "presumptively fair" where, as here, the parties engage in "meaningful discovery" before settlement); Dkt. 270-3 at 3 ("While the contents of the mediation statements and arguments are confidential, they were evidently the product of hard work, presented complex and novel legal arguments, and were highly adversarial").

Moreover, Co-Lead Plaintiffs, the Fire and Police Pension Association of Colorado and the City of Birmingham Retirement and Relief System, sophisticated institutional investors, have played a very active role in supervising and participating in the litigation. Co-Lead Plaintiffs regularly conferred with Co-Lead Counsel, reviewed and commented on filings, attended several hearings, attended each of the seven in-person mediation sessions in San Francisco and New York City, and actively participated in the settlement negotiations. *See* FPPA Decl. ¶ 5; Birmingham Decl. ¶ 5. Furthermore, throughout the settlement-approval process, Co-Lead Plaintiffs have represented Wells Fargo and shareholders' interests by, among other things, "diligently complying with the notice plan and other settlement procedures." *Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL 6619983, at *6 (N.D. Cal. Dec. 18, 2018) ("*Hefler II*"). Lieff Cabraser and Saxena White are highly experienced in securities class and derivative action litigation and have vigorously pursued this case on behalf of the Settlement Class. *See* Lieff Cabraser Decl., Ex. 7 (Lieff Cabraser firm resume); Saxena White Decl., Ex. 7 (Saxena White firm resume). Accordingly, this factor supports approval of the Settlement.

B. The Settlement Results from Arm's-Length Negotiations Overseen by Independent, Renowned Mediators

There is a strong presumption of fairness to settlements negotiated at arm's-length by experienced counsel and with the assistance of an independent mediator. *See, e.g.*, *Hanlon v.*

Chrysler Corp., 150 F.3d 1011, 1029 (9th Cir. 1998); *In re MRV Commc'ns Derivative Litig.*, 2013 WL 2897874, at *2 (C.D. Cal. June 6, 2013) ("'The involvement of experienced [] counsel and the fact that the settlement agreement was reached in arm's length negotiations, after relevant discovery ha[s] taken place create a presumption that the agreement is fair.'" (citation omitted)).

Here, as detailed above, the Settlement was only reached after extensive motion practice, the production and review of hundreds of thousands of pages of documents, and lengthy and protracted negotiations over the course of several months. All counsel possessed a firm understanding of the strengths and weaknesses of their respective claims and defenses. The Settlement came about after seven in-person mediation sessions under the auspices of experienced and respected neutral mediators. During the sessions, the Parties made extremely detailed presentations regarding their respective positions on the merits of the claims, as well on damages, and experts for both sides also participated in and made presentations at these sessions. The final settlement negotiations included two rounds of written submissions and four days of mediation with Judge Weinstein and Mr. Melnick, culminating in the mediator's proposal being submitted to the Parties on December 5, 2018, and accepted in principle by the Parties on December 12, 2018. *See* Dkt. 270-3 at 6 ("I view the Settlement [] as an excellent compromise and resolution of a hard-fought case that presents many risks to both sides. I believe the Settlement represented the highest settlement amount and most favorable terms that Co-Lead Plaintiffs could have achieved at that time").

Accordingly, the advanced posture of this case, and the deliberative nature of the negotiations evidence a fair process involving good-faith arm's-length bargaining. *See, e.g.*, *Hefler v. Wells Fargo & Co.*, 2018 WL 4207245, at *9 (N.D. Cal. Sept. 4, 2018) ("*Hefler I")* ("[I]n light of the fact that the Settlement was reached after the parties engaged in motion practice and participated in multiple days of formal mediation, the Court concludes that the negotiations and agreement were non-collusive."); *HCL Partners Ltd. P'ship v. Leap Wireless Int'l, Inc.*, 2010 WL 4027632, at *2 (S.D. Cal. Oct. 14, 2010) ("Counsel for the parties participated in arm's length negotiations for several months before reaching an agreement. All parties are represented by competent, experienced litigators, and the active involvement of the Honorable Weinstein

(Ret.) as a mediator . . . weighs considerably in favor of concluding this is not a collusive settlement").

C. The Settlement Weighs the Strength of Co-Lead Plaintiffs' Claims with the Substantial Risks of Continuing Litigation

Consistent with Rule 23's instruction to consider "the costs, risks, and delay of trial and appeal," Fed. R. Civ. P. 23(e)(2)(C)(i), courts in this Circuit evaluate "the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation." *Hefler II*, 2018 WL 6619983, at *7 (citing *Hanlon*, 150 F.3d at 1026).

<u>The strength of Plaintiffs' claims.</u> Co-Lead Plaintiffs have secured a historic settlement of this derivative Action, and the substantial amount of the Settlement reflects that Plaintiffs' claims in this case were strong. Indeed, this Court recognized the strength of Plaintiffs' allegations through its Demand Futility Order and 12(b)(6) Order, when it determined that the facts as pled gave rise to cognizable claims and supported Co-Lead Plaintiffs' standing to pursue these claims on the Company's behalf. Given the evidentiary record developed by Co-Lead Plaintiffs' vigorous prosecution of the litigation, Plaintiffs were well-positioned to continue litigating this case through trial. However, as the Court noted in its PA Order, "[w]hile Plaintiffs have survived motions to dismiss on the threshold issue of demand futility [] and on their ability to state a claim [], significant obstacles remain to proving their case and prevailing at trial." *See* Dkt. 274 at 8; *In re Heritage Bond Litig.*, 2005 WL 1594403, at *7 (C.D. Cal. June 10, 2005) ("[I]t is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced"); Dkt. 270-3 at 3 ("Counsel for the Parties presented significant arguments regarding their clients' respective positions, and it was apparent that each side faced risks in proceeding with the case."). Despite Plaintiffs' confidence in their claims, the risks of continued litigation were particularly acute.

<u>Significant and costly procedural hurdles remained</u>. This Action was challenging given the complicated facts and law at issue in the litigation. Based on the volume of evidence obtained and reviewed, the complexity of the issues involved, and the tenacity of Defendants and their counsel, Co-Lead Plaintiffs reasonably expected that the continued prosecution of the Action

through the completion of discovery, summary judgment, and trial would have involved substantial additional work and expense by counsel and this Court, with an uncertain outcome. Specifically, Co-Lead Plaintiffs would need to complete fact and expert discovery, including taking depositions of Wells Fargo employees, the Individual Defendants, and other fact witnesses, and preparing and exchanging expert reports on various issues, including damages. Co-Lead Plaintiffs would also need to brief the inevitable summary judgment and *Daubert* motions and other pre-trial motions. Adverse rulings on a host of issues could have placed the viability of Plaintiffs' claims in jeopardy.

<u>Liability was far from assured</u>. A trial would have been difficult and expensive, requiring extensive factual and expert testimony to prove the elements of Plaintiffs' claims. In order to prevail on Plaintiffs' core *Caremark* breach of fiduciary duty claim at trial, Plaintiffs would bear the burden of establishing that Defendants (i) had *actual or constructive knowledge* of the misconduct, and (ii) failed to act in the face of a known duty to act, thereby demonstrating *conscious disregard* for their responsibilities. *Rosenbloom v. Pyott*, 765 F.3d 1137, 1151 (9th Cir. 2014); *Stone v. Ritter*, 911 A.2d 362, 368-69 (Del. 2006). Defendants would have argued that, contrary to an intentional dereliction of their fiduciary duties to Wells Fargo that allowed the Improper Sales Practices to occur, the Board in fact took numerous steps to expand internal controls, encourage management to prevent sales practice violations, and address the Improper Sales Practices throughout the Relevant Period. For example:

- In 2011, the Board created the Sales and Service Conduct Oversight Team to detect and root out sales practice violations, and formed the Sales Quality Project Group to improve training and monitor sales quality issues;
- In 2013, the Board implemented Quality of Sales Report Cards in 2013 to measure and ensure compliance with proper sales practices and prevent violations;
- In 2013, the Board engaged McKinsey & Co. to analyze and improve Wells Fargo's risk function and organization, including increased funding and staffing, which the Board and management worked cooperatively to implement;
- In 2013, the Board began a proactive analysis into "simulated funding"—the creation and funding of unauthorized accounts—to identify and address improper sales practices;
- In 2013, the Board created a multi-department, cross-functional team of representatives tasked with overseeing, improving and preventing retail banking sales practices issues;

- In 2014, the Board received reports from management indicating that sales practices issues were being scrutinized and that they were decreasing;
- In 2014, management held town hall meetings instructing team members to report any alleged sales misconduct to Wells Fargo's ethics line;
- In 2015, the Board and the Officer Defendants approved two separate third-party consultant reviews: one by PwC focused on consumer harm, and another by Covington & Burlington LLP and Accenture to assess training, compensation and sales practices; and
- In 2015 and 2016, several additional actions and reports purportedly indicating that the sales issues were being addressed, including the establishment of the Sales Practices Oversight Unit within Corporate Risk and other corporate measures.

Defendants would not doubt have pointed to these and other affirmative steps taken by the Board and Officers as evidence that they could not have consciously disregarded their duties, and thus Plaintiffs *Caremark* claim must fail. While Co-Lead Plaintiffs would have vigorously disputed that claim using evidence uncovered in discovery, they also recognized that those efforts and these measures may well have resonated with a jury at trial. For these and other reasons, "the odds of winning [a] derivative lawsuit [are] extremely small" and "rarely successful." *In re Pac. Enters. Sec. Litig.*, 47 F.3d at 378.[4] Indeed, counsel has not identified a single *Caremark* claim that has been successfully tried before a finder of fact in a shareholder derivative action.

Damages would have been contested. Moreover, even if Co-Lead Plaintiffs successfully established liability, the Parties' assessments of damages would be hotly contested and would primarily entail a "battle of the experts." As noted in Co-Lead Plaintiffs' supplemental brief in support of preliminary approval, Co-Lead Plaintiffs would have sought $1.1 billion in out-of-pocket damages, which includes $529 million in civil and regulatory fines, penalties, and payments; $443 million in investigation and litigation costs; and $138 million in remediation efforts. Dkt. 272. Plaintiffs would have been put to the task of demonstrating those out-of-pocket damages were proximately caused by Defendants' breach of their fiduciary duties—that is, their failure to act—rather than some other cause. Wells Fargo also claimed that most if not all of

[4] *See also Maher v. Zapata Corp.*, 714 F.2d 436, 455 (5th Cir. 1983) ("Settlements of shareholder derivative actions are particularly favored because such litigation is 'notoriously difficult and unpredictable.'") (quoting *Schimmel v. Goldman*, 57 F.R.D. 481, 487 (S.D.N.Y. 1973)).

these expenses were part of the Bank's ongoing course of business operations, and therefore not cognizable damages.

Co-Lead Plaintiffs also faced hurdles with respect to demonstrating lost income damages. Co-Lead Plaintiffs estimated that the Company suffered "lost income" of between $1.4 billion and $2.4 billion; however, Defendants disputed that Wells Fargo suffered *any harm* as a result of the alleged wrongdoing, based in part on the fact that Wells Fargo continued to report substantial profits even after the September 2016 disclosure of wrongdoing.[5] Indeed, to the extent that Wells Fargo did lose income, Co-Lead Plaintiffs would have faced significant challenges establishing that Wells Fargo lost business specifically due to the Improper Sales Practices, as opposed to general market effects; the conduct of employees independent of any wrongful act or omission by Defendants; or the financial effects of other alleged wrongdoing. Of course, how a jury might assess these categories of damages is among the uncertainties of trial that weighs in favor of approving settlement. *See Basaraba v. Greenberg*, 2014 WL 12591677, at *3 (C.D. Cal. Nov. 10, 2014) ("Juries can be very unpredictable in their reactions to expert testimony and theories."). There was a serious risk that even after establishing liability, Co-Lead Plaintiffs might well have obtained a damages award from the jury of much less than the Settlement, and perhaps nothing at all.

<u>Success at trial may have resulted in an inferior outcome</u>. Even if Co-Lead Plaintiffs were successful at trial, they would have faced challenges collecting judgment against certain Defendants. Several of the Officer Defendants have had their compensation returned to the Company through the Clawbacks, as well as other compensation forfeitures and reductions implemented in the wake of the Improper Sales Practices. These remediation efforts totaled $180 million.[6] A jury could have easily found a large monetary judgment against the Defendants inappropriate in light of the money already forfeited or clawed back from these defendants.

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[5] Indeed, for the full year 2017, Wells Fargo reported $22.183 billion in net income, slightly more than the $21.938 billion the Bank reported in 2016. *See* News Release, Wells Fargo & Co. (Jan. 12, 2018), https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/earnings/fourth-quarter-2017-earnings.pdf.

[6] *See* "Wells Fargo – Transforming for the Future," at 12 (March 2019), https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/presentations/2019/

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Even a jury verdict and damages award of $240 million—the same exact cash value of this Settlement—would not guarantee cash recovery of $240 million to the Company. Defendants and their insurers would undoubtedly appeal that verdict, and the appellate process could be expected to last for years with no assurance of a sustained favorable outcome for Wells Fargo. The Company's recovery would also be threatened through collateral litigation with Defendants' insurers seeking to avoid payment from the primary source of cash funds, the D&O insurance tower. *See In re Galena Biopharma, Inc. Derivative Litig.*, 2016 WL 10840600, at *2 (D. Or. June 24, 2016) (noting that the individual defendants' "insurers dispute coverage and if the Action does not settle and continues to be litigated, there is a risk that insurance coverage will be denied and an additional insurance coverage lawsuit may ensue").

Lastly, as the Court noted in the PA Order, continued litigation would have deprived the Company of a valuable opportunity to move past the scandal, which provides additional support for the Settlement. PA Order at 9. Co-Lead Plaintiffs were motivated to achieve meaningful and lasting results for Wells Fargo while, at the same time, putting the Company in the best possible position going forward. Thus, this factor strongly weighs in favor of final approval.

D. The Historic Settlement Amount Confers Substantial Benefit to Wells Fargo and its Shareholders

The Settlement provides precedent-setting benefits to the Company and its shareholders. The Settlement provides that Wells Fargo will receive $240 million in cash, paid by insurers on behalf of the Settling Defendants. The merits of the cash recovery alone are remarkable, representing the second-largest cash settlement of a derivative action in history, the largest insurer-funded payment ever by over $100 million, and by far the largest overall cash recovery in a *Caremark* claim case ever. *See* Dkt. 270 at 22-23. This substantial amount reflects the fact that Defendants understood that Co-Lead Plaintiffs and Co-Lead Counsel were determined and willing to take these claims to trial.

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proxy-presentation.pdf (noting $180 million in Executive Accountability Actions Taken by [Wells Fargo's] Board and the [Human Resources Committee]).

Beyond the monetary recovery, the proposed Settlement includes $122.5 million in Clawbacks, which Wells Fargo acknowledges conferred a remedial value of $60 million to the Company, and which represent an enduring deterrent against future misconduct. *See* Dkt. 270-1, Ex. B. Similarly, the Reforms, which Wells Fargo values at $20 million, mark a departure from the problems of the past and signal that the Company is effectively turning a new page and is dedicated to preventing and investigating sales and related conduct issues, and promoting more active monitoring of Company culture. *See* Dkt. 270-1, Ex. A. The Reforms are not only designed to address the allegations in the Action, but also to strengthen and enhance compliance, as well as oversight of compliance, in the highly regulated banking industry. These Reforms also augment the functionality and accountability of the Board and its various governing committees. *See* Dkt. 270-3 at 4-5 (Judge Weinstein stating that "the Corporate Governance Reforms enhanced oversight of conduct and compliance risk, changed the compensation incentives for employees of the Company, and updated Board-level reporting structures"); *see also* Dkt. 270-4 at 2-3 ("the Corporate Governance Reforms represent a major step forward for Wells Fargo's overall corporate governance that. . . helps to protect the public and customers from future abuse and wrongdoing"). These Reforms will materially improve the Company's corporate governance, and thus its financial prospects, for years to come. *See* Gordon Decl. ¶ 38 ("The compliance failure reflected in the Improper Sales Practices was enormously costly for Wells Fargo and its shareholders. . . For this reason it is my opinion that the Reforms will deliver substantial value for Wells Fargo and its shareholders and that Co-Lead Plaintiffs' efforts in promoting these reforms have thus created substantial value for Wells Fargo and its shareholders.").

As Defendants explicitly acknowledge, this litigation was a significant factor that the Board took into account in determining to adopt the Clawbacks and the Reforms. *See In re Hewlett-Packard Co. S'holder Derivative Litig.*, 716 F. App'x at 607 ("The district court found that this litigation at least 'in part' caused the governance reforms that HP adopted . . . HP acknowledged that the lawsuits were a contributing factor to the reforms"). Co-Lead Plaintiffs' efforts were a direct catalyst for many of these initiatives; indeed, Wells Fargo decided to implement these reforms in response to Co-Lead Plaintiffs' proposals during the pendency of

Settlement negotiations. The Ninth Circuit has held that there is a "presumption that there is a causal relationship between" a timely filed lawsuit and a subsequently enacted reform or benefit. *Id.* (citing *Alaska Elec. Pension Fund v. Brown*, 941 A.2d 1011, 1015 (Del. 2007)). And "benefits to a corporation that are 'causally related to the [derivative] lawsuit' may serve as valid consideration for approval of a settlement." *Id*. (citing *Polk*, 507 A.2d at 538).

The fact that the Reforms provided by the Settlement directly target the organizational and corporate compliance failures alleged in the Action strongly militates in favor of approval. *See Sved v. Chadwick,* 783 F. Supp. 2d 851, 866 (N.D. Tex. 2009) (approving derivative litigation settlement because it "offers tangible, long-term remedial measures that are specifically designed to avoid the alleged missteps in [the company's] past and protect shareholders as the company moves forward"); *Mohammed v. Ells*, 2014 WL 4212687, at *3 (D. Colo. Aug. 26, 2014) (finding settlement fair and adequate where "the corporate governance reforms provided for as part of the settlement are specifically and appropriately designed to prevent the recurrence of the alleged misconduct that formed the basis for this action"). Corporate governance reforms that "serve to prevent and protect [the company] from the reoccurrence of" alleged wrongdoing confer a substantial benefit, warranting settlement approval. *United Nat'l Ret. Fund v. Watts*, 2005 WL 2877899, at *5 (D.N.J. Oct. 28, 2005).[7] Indeed, "[a]s corporate debacles such as Enron, Tyco and WorldCom demonstrate, strong corporate governance is fundamental to the economic well-being and success of a corporation," and "'[c]ourts have recognized that corporate governance reforms such as those achieved here provide valuable benefits to public companies.'" *NVIDIA*, 2008 WL 5382544, at *3.

Finally, the Settlement reflects a recovery of between 9.1 and 29.1 percent of the total potential damages. *See* Dkt. 272 at 2. That the Settlement "is higher than recoveries achieved in other…actions of similar size (over $1 billion in estimated damages), which settled for median

[7] In recognition of the fact that Wells Fargo was addressing other factors beyond the Action during the implementation of the Clawbacks and the Reforms—including regulatory investigations, other shareholder actions and public scrutiny—as well as the inherent difficulty in quantifying the value of the Reforms, the Parties valued these non-monetary benefits at $80 million. ECF No. 270-1 at 9. This valuation is supported by Wells Fargo, the Individual Defendants, Judge Weinstein and Professor Santoro. *See* ECF Nos. 270-1, 270-3, 270-4.

recoveries of 2.5 percent between 2008 and 2016, and 3 percent in 2017" weighs "in favor of approval." *Hefler II*, 2018 WL 6619983, at *8.[8] Indeed, the $240 million cash recovery alone equates to approximately 21.8 percent of the $1.1 billion in out-of-pocket damages to the Company, and between 6.9 and 9.6 percent of the $2.5 billion to $3.5 billion total maximum damages, inclusive of the more speculative loss of income category of damages. *See* Dkt. 272 at 4; Dkt. 274 at 11 (noting "the particular difficulties of establishing the larger category of lost income damages").[9] The Settlement is exceptional by any measure.

E. The Experience and Views of Lead Counsel Weigh in Favor of Granting Final Approval

The Court also considers "the experience and views of counsel." *Hanlon*, 150 F.3d at 1026. As this Court has stated, "[t]hat counsel advocate in favor of this Settlement weighs in favor of its approval." *Hefler II*, 2018 WL 6619983, at *9; *see also MRV Commc'ns*, 2013 WL 2897874, at *5 ("'Great weight' is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation."). Here, experienced counsel, operating at arm's length, have weighed all of the foregoing factors and endorse the proposed Settlement. Counsel for Co-Lead Plaintiffs are among the nation's leading complex securities litigation firms, each with extensive experience in litigating complex actions such as this one. *See*

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[8] *See also* Stefan Boettrich & Svetlana Starykh, NERA Economic Consulting, *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review*, 35 fig. 27 (2019) (finding the median ratio of settlement value to investor losses was 1.2 percent for investor losses of $1.000–$4.999 billion); Laarni T. Bulan et al., Cornerstone Research, *Securities Class Action Settlements, 2018 Review & Analysis*, 6 fig. 5 (2019) (finding that in cases with "simplified tiered damages" of over $1 billion, the median settlement value was 2.0 percent of the "simplified tiered damages" for 2018 settlements).

[9] While Plaintiffs have analogized the monetary component to comparable securities class action settlements, this is only because settlements of this magnitude in the derivative context are virtually unprecedented. Indeed, the vast majority of derivative cases settle for little to no cash, and in the history of derivative litigation, fewer than ten cases have settled for $100 million or more—and most of this small sub-set of cases did not include *Caremark* claims, but were actions contesting a merger or acquisition. *See, e.g.*, "Largest Derivative Lawsuit Settlements," *The D&O Diary*, https://www.dandodiary.com/2014/12/articles/shareholders-derivative-litigation/largest-derivative-lawsuit-settlements/ (last updated March 3, 2019). This fact reflects the extraordinary difficulties that Co-Lead Plaintiffs faced in seeking to establish substantial monetary liability on behalf of a corporation against its outside directors for alleged breaches of fiduciary duty.

Dkt. 34-3, 34-4.[10] Together, the collective experience and judgment of Co-Lead Counsel supports approval of the Settlement. *See Stewart v. Applied Materials, Inc.*, 2017 WL 3670711, at *6 (N.D. Cal. Aug. 25, 2017) ("finding class counsel's recommendation in favor of settlement presumptively reasonable because counsel demonstrated knowledge about the case and securities litigation in general").

Similarly, Wells Fargo is represented by Sullivan & Cromwell LLP. The Director Defendants are represented by Shearman & Sterling LLP. The Officer Defendants are individually represented by Goodwin Procter LLP, Clarence Dyer & Cohen LLP, Ramsey & Ehrlich LLP, Skaggs Faucette LLP, and Arguedas, Cassman & Headley, LLP. These defense firms are among the most prestigious in the country, and the individual lawyers for all Defendants involved have many years of experience representing defendants in complex securities and derivative litigation. The Settlement was reached only after all counsel had conducted a substantial investigation, discovery and protracted settlement negotiations; considered the relative strengths and weaknesses of their respective cases; and concluded that the Settlement is a fair and reasonable result, recommending its approval.

F. After A Robust Court-Approved Notice Plan, Wells Fargo Shareholders Overwhelmingly Favor Final Approval of the Settlement

Pursuant to the terms of the May 14, 2019 PA Order, Wells Fargo published a copy of the Notice in several major newspapers and filed a Form 8-K with the SEC on May 20, 2019. Notice was also published via a national newswire service, on Wells Fargo's website, and on an additional website created specifically for the purpose of providing notice to shareholders. The contents of the Notice were also approved by the Court and contained detailed descriptions of the

[10] *See also In re Volkswagen "Clean Diesel" Mkt'g, Sales Practices & Prods. Liab. Litig.*, No. 3:15-md-02672-CRB (N.D. Cal.) (Lieff Cabraser, as lead counsel, obtained a series of class action settlements totaling over $11 billion); *In re Broadcom Corp. Derivative Litig.*, No. C-06-3252 R (CWx) (C.D. Cal.), (in a shareholder derivative action and the largest stock options backdating case in the country, Lieff Cabraser achieved settlements totaling $197.5 million); *In re Wilmington Tr. Sec. Litig.*, Master File No. 10-cv-00990-ER (D. Del.) (Saxena White as co-lead counsel achieved $210 million settlement representing a recovery of nearly 40% of maximum recoverable damages, ranking among the top-ten securities fraud settlements in the Third Circuit); *In re Bank of Am. Corp. Sec., Derivative & ERISA Litig.*, No. 09-md-2058 (S.D.N.Y.) (Saxena White recovered $62.5 million for the company and its shareholders, along with fundamental, board-level corporate governance reforms).

history of the Action and proposed Settlement, and the claims that will be released if the proposed Settlement is approved. Notice was also posted on the websites of Lieff Cabraser and Saxena White.

The Notice advised shareholders of the July 11, 2019 deadline to file objections.[11] Co-Lead Counsel have not received any objections to the Settlement. *See* Petterson Decl. ¶ 5. "[T]he absence of a large number of objections to a…settlement raises a strong presumption that the terms of a proposed class settlement action are favorable. . ." *Hefler II*, 2018 WL 6619983, at *9. Even a small number of objections in the face of overwhelming support is convincing evidence of a proposed settlement's fairness and adequacy—particularly here, where the vast majority of shareholders are sophisticated institutional investors with the resources to object to a settlement if they so chose. *See id.* ("[T]hat not one sophisticated institutional investor objected to the Proposed Settlement is indicia of its fairness."); *OSI Sys.*, 2017 WL 5642304, at *4 (approving a derivative settlement in part because "the lack of objection" created a strong presumption that the terms of a proposed settlement were fair).[12]

CONCLUSION

The Settlement represents an outstanding result for Wells Fargo and its shareholders. Based on all of the foregoing considerations, Co-Lead Plaintiffs respectfully request that the Court grant final approval of the Settlement as fair, reasonable, and adequate.

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[11] To the extent that any shareholder submits an objection to any aspect of the Settlement, Co-Lead Plaintiffs will address such objection in their reply brief in further support of final approval of the Settlement, which is due to be filed on July 25, 2019.

[12] As detailed in the accompanying Motion for Award of Attorneys' Fees and Reimbursements to Co-Lead Plaintiffs ("Fee Motion"), incorporated by reference herein, Co-Lead Counsel's request for an award of attorney's fees and Co-Lead Plaintiffs' requested Reimbursement Awards are fair and reasonable and fully supported by all factors considered by Courts in the Ninth Circuit.

Dated: June 27, 2019

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